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UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

SELTZER CAPLAN McMAHON VITEK, a Law Corporation, Defendant/Petitioner, vs. DAMON ABNOS, an individual, Plaintiff/Respondent	CASE NO. 3:08-cv-00201-WQH-WMc **DEFENDANT/PETITIONER SELTZER CAPLAN McMAHON VITEK'S NOTICE OF MOTION AND MOTION TO REMAND ACTION TO STATE COURT** Judge: Hon. William Q. Hayes Courtroom: 4 (4th Floor) Date: April 1, 2008 Time: 11:00 a.m. **NO ORAL ARGUMENT UNLESS REQUESTED BY THE COURT**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on **April 1, 2008**, at **11:00 a.m.,** or as soon thereafter as counsel can be heard, in Courtroom 4 of the above-entitled court, located at 940 Front Street, San Diego, California, Defendant/Petitioner SELTZER CAPLAN McMAHON VITEK will and hereby does bring a Motion to Remand this action to state court pursuant to 28 U.S.C. section 1447.

Specifically, the Court should remand this action because, as Plaintiff in the pending state court action, Damon Abnos has no right to remove the action under 28 U.S.C. section

1441(a). Alternatively, to the extent he has any such right to remove, Mr. Abnos contractually waived it when he signed an arbitration agreement with Defendant/Petitioner SELTZER CAPLAN McMAHON VITEK. Also, Mr. Abnos' Notice of Removal is defective because Mr. Abnos failed to attach all the pleadings that were served on him in the state action as required by 28 U.S.C. section 1446(a).

Defendant/Petitioner SELTZER CAPLAN McMAHON VITEK also requests the Court to award the fees incurred as a result of removal under 28 U.S.C. section 1447(c).

This Motion is based upon this Notice of Motion and Motion; the Memorandum of Points and Authorities in support of this Motion; the Declaration of Christopher L. Ludmer in support of this motion and the attached exhibits; and all records and pleadings on file in this action, and upon such oral argument as may be presented at the hearing of this Motion.

Respectfully submitted,

Dated: 2/27/08

SELTZER CAPLAN McMAHON VITEK
A Law Corporation

By: [signature]
Christopher L. Ludmer
Attorneys for Defendant/Petitioner
SELTZER CAPLAN McMAHON VITEK